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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

KEYSTONE COCA-COLA BOTTLING CO.,
Petitioner,

v.

PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW,
Respondent.

On Petition for Writ of Certiorari to the Commonwealth Court of Pennsylvania

BRIEF *AMICUS CURIAE* OF LPA IN SUPPORT OF PETITIONER

DANIEL V. YAGER *
TIMOTHY J. BARTL
MCGUINESS & WILLIAMS
1015 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
(202) 789-8600
Attorneys for Amicus Curiae LPA

* Counsel of Record

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BRIEF *AMICUS CURIAE* OF LPA IN SUPPORT OF PETITIONER

LPA respectfully submits this brief *amicus curiae* with the consent of all parties.[1] The brief supports the petition for writ of certiorari.

INTEREST OF THE *AMICUS CURIAE*

LPA, formerly known as the Labor Policy Association, is an organization of the senior human resources officers of over 250 of the nation's largest private

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[1] Counsel for *amicus curiae* LPA authored this brief in its entirety. No person or entity other than LPA made a monetary contribution to the preparation of the brief.

employers, collectively employing more than 12 million Americans. Since its founding in 1939, LPA has been concerned exclusively with the development of laws and policies relating to employment. LPA's mission is to ensure that laws and policies affecting labor relations in the private sector are sound, practical, and responsive to the realities of the modern workplace.

Because of its interest in the development of the nation's labor laws, LPA has participated as *amicus curiae* on many labor law issues in cases before this Court, the United States Courts of Appeals, and the NLRB.[2]

All of LPA's members are employers subject to the unemployment compensation laws of the various states, and almost all are multi-state employers subject to the requirements of several states. As a result, LPA is greatly concerned about the decision below in this case, which permits the Commonwealth of Pennsylvania to impose tangible sanctions on an employer based on the company's conduct in collective bargaining. The issue is especially significant to LPA because it could subject the large majority of our members—*i.e.* multi-state employers—to varying standards of conduct in collective-bargaining depending on the jurisdictions in which they operate.

Thus, LPA has an interest in, and familiarity with, the issues presented in this case. Indeed, because of its expertise in human resource management, LPA is uniquely situated to brief the Court on the signifi-

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[2] *E.g. Webcor Packaging, Inc. v. NLRB, cert. denied,* 118 S. Ct. 1035 (1998); *Electromation v. NLRB,* 35 F.3d 118 (7th Cir. 1994); *Jeffboat Div., Am. Comm. and Marine Serv. Co.,* 9-UC-406 (NLRB) (decision pending).

cance of the issue beyond the immediate concerns of the parties to the case.

STATEMENT OF THE CASE

The facts of the case are set out fully in the Petition for Writ of Certiorari.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The question presented in this case—whether a state tribunal may condition the granting of unemployment benefits on the employer's *conduct* in collective-bargaining—is an important issue that should be resolved by this Court.

This Court has stated on numerous occasions that the NLRB has primary jurisdiction over any conduct arguably prohibited or protected by the National Labor Relations Act (NLRA). This arrangement is needed to maintain labor stability by providing for a single, predictable standard for what constitutes an unfair labor practice. Without this single, predictable standard, labor negotiations will be regulated according to the whim of fifty-one jurisdictions. The Congressional intent to encourage labor stability led it to create the NLRB as the exclusive arbiter of controversies under the NLRA, in order to ensure uniform, national standards of conduct in labor-management relations.

The labor stability mandated by Congress in the NLRA would be frustrated if a state is permitted to regulate the bargaining conduct of employers and enforce its own narrow, local, idiosyncratic view of the proper relationship between an employer and its employees. In conflict with standards established by the NLRB, the Commonwealth Court of Pennsylvania

has created its own standard of bad-faith bargaining in labor negotiations and has permitted the state to award unemployment compensation to workers based on its interpretation of that standard. This decision by the Commonwealth Court of Pennsylvania creates the sort of labor instability Congress intended to prevent when it drafted the NLRA and created the NLRB.

Management and labor negotiating in Pennsylvania, including multi-state or multinational negotiations, are forced to comply with Pennsylvania's local standard for bad-faith bargaining, or otherwise face potential economic penalties. Moreover, Pennsylvania is not alone among states in conditioning legal consequences upon local standards of bad-faith bargaining. Thus, if allowed to stand, Pennsylvania's local approach to labor regulation will create turmoil in the collective-bargaining process—potentially subjecting employers and unions to numerous and varied legal repercussions in the fifty-one jurisdictions, simply because of the way they bargained.

As this Court has stated, this kind of multiplicity of courts and procedures inevitably will produce incompatible or inconsistent results, in direct conflict with the wishes of Congress. And for these reasons, this Court prudently enforces the NLRB's primary jurisdiction over labor practices that are arguably unfair.

It is Pennsylvania's independent determination that the employer in this case bargained in bad faith, based on local standards and without regard to the NLRB's primary jurisdiction, that is at issue. This Court, in *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979), has ruled

that states are not prevented by the NLRA from granting unemployment compensation to striking workers. However, the present case is not about a state's authority to determine under what circumstances to grant unemployment compensation to idled workers. The issue in this case is whether a state may regulate the collective-bargaining process itself, by conditioning real and tangible economic sanctions on an employer based on the *state's opinion* of that employer's conduct at the negotiating table. This, a state may not do.

With passage of the NLRA, Congress reserved regulation of the collective-bargaining process for the federal government. The decision by the Commonwealth Court of Pennsylvania encroaches on this federal domain. This is precisely the type of case that warrants review by this Court.

REASONS FOR GRANTING THE WRIT

A STATE'S GRANT OF UNEMPLOYMENT COMPENSATION BASED UPON ITS INDEPENDENT DETERMINATION THAT THE EMPLOYER BARGAINED IN BAD FAITH VIOLATES THE INTENT OF CONGRESS TO CREATE A CONSISTENT NATIONAL LABOR LAW ADMINISTERED UDER THE PRIMARY JURISDICTION OF THE NLRB

A. The NLRB Has Sole Primary Jurisdiction of What Constitutes an Arguable Unfair Labor Practice

The Congressional intent to encourage labor stability led it to create the NLRB as a national "board of experts" to apply the NLRA and determine when unfair labor practices have been committed. *Chicago Tribune v. NLRB*, 504 U.S. 955 (1992); *NLRB v. Insurance Agents' International Union*, 361 U.S. 477 (1960); *United Steelworkers, Local Union 14534 v. NLRB*, 983 F.2d 240 (D.C. Cir. 1993); *Gratiot Com-*

munity Hosp. v. NLRB, 51 F.3d 1255 (6th Cir. 1995); *Roman Iron Works*, 275 NLRB 449 (1985). When it created the NLRB, Congress vested it with sole primary jurisdiction for determinations of what argu. bly constitutes an unfair labor practice. "The overriding interest in a uniform, nationwide interpretation of the federal statute by the centralized expert agency created by Congress not only demands that the NLRB's primary jurisdiction be protected, but it also forecloses overlapping state enforcement of the prohibitions in section 8 of the Act." *Plankinton Packing Co. v. Wisconsin Employment Relations Bd.*, 338 U.S. 953, 956 (1950).

If the primary jurisdiction of the NLRB over all matters involving an arguably unfair labor practice is violated, the result will be a confusing mix of conflicting local standards applied by dozens of jurisdictions, leading to considerable labor unrest. "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner v. Teamsters, Chauffeurs & Helpers Local Union*, 346 U.S. 485, 490-491 (1953). This concern about a multiplicity of courts and jurisdictions interfering with the purpose of the NLRB has been expressed by this Court on numerous occasions. "When an activity is arguably subject to section 7 or section 8 of the Act (NLRA), the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference is to be averted." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). "The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great

a danger of conflict with national labor policy." *Id.* at 780.

The Unemployment Board and the Commonwealth Court ruled against Keystone and sanctioned the company based on evaluations of the bargaining process between Keystone and the Teamsters. Concluding that Keystone bargained in bad faith, Pennsylvania sanctioned the company for an alleged unfair labor practice. This is precisely the sort of decision that Congress intended to be left to the National Labor Relations Board. "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by section 7 of the NLRA, or constitute an unfair labor practice under section 8, due regard for the federal enactment require that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law." *Id.* at 779.

The issue of whether or not the activities of Keystone and the Teamsters fall under the rubric of section 7 or section 8 of the NLRA is also left to the NLRB. "At times it has not been clear whether the particular activity regulated by the States was governed by section 7 or section 8 or was, perhaps, outside both these sections. But courts are not the primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board." *Id.* at 779.

Based on the intent of Congress and the repeated pronouncements of this Court on the subject, it is clear that any state attempts to regulate the bargaining process between employer and workers that

interfere with the primary jurisdiction of the NLRB over any controversy that may arguably be an unfair labor practice must be struck down. Any state law is invalid if it "either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the Federal government to discharge those duties, for the performance of which they were created." *Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (1896). This principle is among the most recognized in the entire realm of American law. The States have no power to "retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819). Defending the supremacy of the federal law against illegal and local encroachments from the States is an "unbroken rule that has come down through the years." *Nash v. Florida Industrial Com.*, 389 U.S. 235, 240 (1967).

B. Pennsylvania and Other States Base Decisions to Award Unemployment Compensation Upon Their Independent Determination of Bad-Faith Bargaining

Pennsylvania is only one of many states that base decisions on whether or not idled workers will receive unemployment compensation upon an independent, localized determination of bad-faith bargaining or 'culpability' for the work stoppage.

The states of Alaska, Arizona, California, Delaware, Mississippi, Montana, Utah, and West Virginia base decisions about the eligibility of employees for unemployment compensation during a work stoppage upon their own local determinations of whether the labor dispute occurred because of an unfair labor practice or the 'culpability' for the controversy.

See Alaska Stat. § 23.20.383(b)(2). (There is no benefit disqualification if "the labor dispute is caused by the failure or refusal of the employer and the insured worker, or a state or federal law pertaining to hours, wages, or other conditions of work."); Ariz. Rev. Stat. § 23-777(B) ("If the commission, upon investigation, find that the dispute, strike or lockout is caused by the failure or refusal of an employer to conform to the provisions of an agreement or contract between employer and employee, or a law of this state or of the United States pertaining to hours, wages or other conditions of work, such dispute, strike or lockout shall not render the workers ineligible for benefits."); *Coast Packing Co. v. California Unemployment Ins. Appeals Board*, 410 P.2d 358 (Ca. App. 1966) ("Ineligibility for unemployment compensation of employee who left work because of trade dispute is determined by worker's conduct and circumstances . . ."); Colo. Rev. Stat. § 8-73-109 ("[T]he individual will not be determined ineligible unless the lockout results from the demands of employees as distinguished from an effort on the part of the employer to deprive the employees of some advantage they already possess."), ("Unemployment benefits may be granted to strikers if the state industrial commission decides the employer was guilty of bad-faith bargaining or other unfair labor practice."); Del. Code Ann. tit. 19, § 33154(c) ("[T]he Department finds . . . [t]he employing unit has refused to permit work to continue and maintain the status quo for a reasonable time pending further negotiations."); Miss. Code Ann. § 71-5-513(A)(4)(a) ("[T]his subsection shall not apply if it is shown to the satisfaction of the commission . . . [h]e is unemployed due to a stoppage of work occasioned by

an unjustified lockout . . ."); Mont. Code Ann. § 39-51-2305(a)(3) ("If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work . . ."); Utah Code Ann. § 35A-4-405(4)(a) ("[I]f the division finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits."); W.Va. Code § 21A-6-3(4) ("[U]nemployment is due to a stoppage of work which exists because of a labor dispute [claimant is inenigible] . . . unless the commissioner is satisfied that . . . employees are denied the right of collective bargaining under generally prevailing conditions").

Furthermore, many states, like Pennsylvania, use statutes that condition eligibility for unemployment compensation upon a determination of the cause of the labor dispute. This 'culpability test' relies on a determination of whether a labor dispute is a strike or a lockout. *See* Ark. Code Ann. § 11-10-58(a); Fla. Stat. ch. 443.101(4)(b); Ga. Code Ann. § 34-8-194(4)(C); Ill. Comp. Stat. § 820/604; Ky. Rev. Stat. Ann. § 341.360(1); Md. Code Ann., [Lab. & Empl.] § 8-1004(a)(1); Mass. Gen. Laws ch. 151A, § 25; Minn. Stat. § 268.09(18)8(c)(2; Mo. Rev. Stat. § 288.040 6.(2); N.H. Rev. Stat. Ann. § 282-A:36(II-a); Ohio Rev. Code Ann. § 4141.29(D)(1)(a); Okla. Stat. tit. 40, § 2-410(2(c); Or. Rev. Stat.

§ 657.200(3); S.D. Codified Laws § 61-6-19(3); Vt. Stat. Ann. § 1344(a); Wis. Stat. § 108.04.[3]

Clearly, then, the unemployment compensation laws and decisions of many states are in direct violation of the intent of Congress to vest the NLRB with sole primary jurisdiction over all arguable unfair labor practices. This alarming and unforeseen situation urgently requires the attention of this court.

C. A State Decision to Award Unemployment Compensation Based on an Independent Determination of Bad-Faith Bargaining Violates the Jurisdictional Primacy of the NLRB and Impermissibly Intrudes Upon the Bargaining Process and Private Conduct of the Parties

One of the most important tasks of the NLRB is to determine what is bad-faith bargaining and when it has occurred. To accomplish this, the NLRB interprets sections 8(a)(1) and 8(a)(5) of the NLRA

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[3] The Illinois and Missouri statutes condition Unemployment benefits to some degree on determinations made by federal authorities. *See* Ill. Comp. Stat. § 820/604 ("For purpose of disqualification under this Section the term 'labor dispute' does not include a lockout by an employer for any week during which (1) the employer refuses to meet under reasonable conditions with the recognized or certified collective bargaining representative of the locked out employees to discuss the issues giving rise to the lockout or (2) there is a final adjudication under the National Labor Relations Act that during the period of the lockout the employer has refused to bargain in good faith with the recognized or certified collective bargaining agreement."); Mo. Rev. Stat. § 288.040 6. (2) ("Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.")

(29 U.S.C. sections 158(a)(1), (a)(5)). In this case, however, the Unemployment Board granted unemployment compensation based upon its own independent and local standards of bad-faith bargaining. The NLRB never made a finding of bad-faith bargaining by Keystone.

This Court has recognized that the "overriding interest in a uniform nationwide interpretation of the federal statute by the centralized expert agency created by Congress not only demands that the NLRB's primary jurisdiction be protected, it also forecloses overlapping state enforcement of the prohibition in section 8 of the Act." *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U.S. 953, 956 (1950). This interest also forecloses "state interference with the exercise of rights protected by section 7 of the Act." *International Union, United Auto Workers v. Russell*, 356 U.S. 634, 644 (1958).

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by section 7 of the National Labor Relations Act, or constitute an unfair labor practice under section 8, due regard for the federal enactment requires that state jurisdiction must yield. . . Nor has it mattered whether the States have acted through laws of general applicability rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes.

San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245 (1959). This court re-emphasized those

doctrines in *New York Telephone Company v. New York Dept. of Labor*, 440 U.S. 518, 528-529 (1979).[4]

If this Court permits Pennsylvania to continue this course, the result will be a patchwork quilt of contradictory and conflicting labor laws among the states, in direct defiance of the expressed intent of

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[4] "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been preempted by federal authority and thereby withdrawn from state power are not subject to delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480 (1955). "At times it has not been clear whether the particular activity regulated by the States was governed by section 7 or section 8 or was, perhaps, outside both these sections. But courts are not the primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction must yield to the exclusive primary competence of the Board." *Garmon* at 779. *Hudgens v. NLRB*, 424 U.S. 507, 522 (1976). "[A]lmost all of the Court's labor law decisions in which state regulatory schemes have been found to be preempted have involved state efforts to regulate or prohibit private conduct that was either protected by section 7, prohibited by section 8, or at least arguably so protected or prohibited." *New York Telephone*, 440 U.S. at 530. *See also Hill v. Florida*, 325 U.S. 538 (1945), *International Assoc. of Bridge, Structural & Ornamental Iron Workers Union v. Perko*, 373 U.S. 701 (1963), *United Assoc. of Journeymen & Apprentices v. Borden*, 373 U.S. 690 (1963), *Marine Engineers Beneficial Assoc. v. Interlake S.S. Co.*, 370 U.S. 173 (1962).

Congress. As this Court wrote in *Wisconsin Dep't of Industry, Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282, 287, (1986), "States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits." Furthermore, conflict is imminent when "two separate remedies are brought to bear on the same activity." The *Garmon* preemption principle "prevents States not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act. The rule is designed to prevent 'conflict in the broadest sense' with the 'complex and interrelated federal scheme of law, remedy, and administration.'" *Id.* at 1061. *See also Garner*, 346 U.S. at 498-499.

Because of the decisions by the Unemployment Board and the Commonwealth Court, management and labor negotiating in Pennsylvania—including multi-state or multi-national negotiations—will be forced to comply with Pennsylvania's view of bad-faith bargaining. Companies that do not comply with the state's local, idiosyncratic standards face economic penalty for unemployment compensation if labor negotiations result in a work stoppage. If allowed to stand, Pennsylvania's local standards, peculiar to that state, will put employers at a severe disadvantage in negotiations with unions because of uncertainty about the legal ramifications of bargaining tactics commonly used by that employer elsewhere and, previously, in Pennsylvania itself.

Should the example of Pennsylvania be replicated around the country, multi-state and multi-national employers will be faced with the prospect of conduct-

ing their labor negotiations with an eye to the local standards of fifty-one different jurisdictions. Employers would have to check the law of every jurisdiction in which they operate and tailor their negotiations to meet the local criteria of what qualifies as good-faith bargaining. By injecting itself between the negotiating parties, Pennsylvania has impermissibly intruded into the bargaining process. Congress intended that the bargaining process would be dominated by the parties themselves—employer and employees—and that any questions of unfair labor practices would be referred to the NLRB. The decisions of the Unemployment Board and the Commonwealth Court violate the rights of the parties to the bargaining process and the jurisdictional primacy of the NLRB.

D. The Misinterpretation of Past Decisions of This Court by the Commonwealth Court of Pennsylvania and Other States Has Allowed States to Intrude Upon the Primary Jurisdiction of the NLRB and Has Led to Uncertainty About the Relationship Between the NLRB and the States

The critical issue in this case is Pennsylvania's independent determination that Keystone bargained in bad faith, based on local standards. While this Court has ruled that states are not prevented by the NLRA from granting unemployment compensation to striking workers, *see New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979), that decision does not support the position of Pennsylvania in the present case.

The law of the state of New York grants workers unemployment compensation eight weeks from the start of work stoppage, regardless of reasons for the

labor dispute. In *New York Telephone*, this Court permitted the New York approach because it found that the state law did not violate the primary jurisdiction of the NLRB—*i.e.* it did not regulate labor relations. As this Court wrote at the time:

> there is no claim in this case that New York has sought to regulate or prohibit any conduct subject to the regulatory jurisdiction of the Labor Board under section 8. Nor are the petitioning employers pursuing any claim of interference with employee rights protected by section 7. The State simply authorized striking workers to receive unemployment benefits, and assessed a tax against struck employers, once the economic warfare between the two groups reached its ninth week.

New York Telephone Company v. New York State Department of Labor, 440 U.S. at 530.

Furthermore, the court wrote, "the case before us does not involve any attempt by the State to regulate or prohibit private conduct in the labor-management field." *Id.* at 534. Writing about the New York unemployment compensation policy, this Court ruled that "(t)he general purport of the program is not to regulate the bargaining relationships between the two classes but instead to provide an efficient means of insuring employment security in the State." *Id.* at 534. This is not only a critical difference between *New York Telephone* and *Keystone*, but also a critical issue in the case at bar. The New York unemployment compensation law "is not a state law regulating the relations between employees, their union and their employer, as to which the reasons underlying the pre-emption doctrine have their greatest force." *Id.* at 534.

Therefore, the case at bar does not resemble *New York Telephone*. Instead, it is to *Garmon* and the pre-emption principle enunciated in *Garmon* that this court should look to for guidance in deciding this case.

E. The Sanction of the Petitioner by the Commonwealth of Pennsylvania Is Important Because It Makes the Bargaining Process Uncertain and Places Employers at a Severe Disadvantage

By declaring the collective bargaining agreement between the employer and its employees invalid due to alleged bad-faith bargaining by the employer, Pennsylvania has severely sanctioned the petitioner. By applying its own standards to the bargaining process, Pennsylvania has sought to regulate the private conduct of the parties to this labor dispute. This compels the employer to bargain differently, with an eye to how their negotiations will be regarded by the state courts. This has a tangible effect on the employer's private conduct and imposes an undue burden on this employer and any other.

It is to the benefit of employers, employees, labor unions and the economy as a whole, if standards of what constitutes bad-faith bargaining and unfair labor practices are applied consistently throughout the country. Without a clear, consistent set of standards to consider, the bargaining process will become slow, burdensome, tedious and fraught with the danger of a legal catastrophe for the parties. Congress understood this when it enacted the NLRA and created the NLRB. If this court allows Pennsylvania and other states to usurp the proper role of the NLRB and impose their own local, idiosyncratic standards for unfair labor practices, the will of Con-

gress will be thwarted, the rights of the parties to the bargaining process will be violated and commerce will be frustrated. It is a severe sanction to employers if they must consider the local standards of a multiplicity of jurisdictions before they can negotiate with their employees. The expense of time and money for employers to investigate the local standards in each jurisdiction where they negotiate with employees places an undue burden upon companies.

In this case, Keystone suffered a serious sanction when the Commonwealth Court of Pennsylvania ruled the work stoppage to be a lockout, thus making Keystone employees eligible for unemployment compensation. The result of this intrusion into the bargaining process by Pennsylvania is to weaken the negotiating position of the petitioner and diminish it financially by making it responsible for payments to fund the unemployment compensation for its idled workers. The Commonwealth Court punished Keystone because it did not approve of the way the company bargained with its employees. A state court may not attempt to regulate the bargaining process in this manner.

By usurping the primary jurisdiction of the NLRB and making and enforcing their own determinations of what constitutes an unfair labor practice, the states are creating local labor relations law for unemployment compensation. While the goal of keeping unemployment low is a laudable one, doing so by injecting itself into the private bargaining process of the negotiating parties and punishing those the state believes to be responsible for a work stoppage is not the proper role of state government. "Even the States' salutary effort to redress private wrongs

or grant compensation for past arm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme." *Garmon*, 359 U.S. at 248.

The intent of Congress to create a consistent national labor law, immune to the vagaries of local, idiosyncratic interference has been fustrated because Pennsylvania and many other states maintain unemployment compensation schemes which violate the NLRB's primary jurisdiction to regulate the collective-bargaining process.

CONCLUSION

For the foregoing reasons, LPA respectfully requests that the Court grant certiorari in this case.

Respectfully submitted,

DANIEL V. YAGER *
TIMOTHY J. BARTL
MCGUINESS & WILLIAMS
1015 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
(202) 789-8600
Attorneys for Amicus Curiae LPA

* Counsel of Record